

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISIDRO HERNANDEZ,

Plaintiff,

v.

GOV. EDMUND G. BROWN, JR., et
al.,

Defendants.

Case No.: C 13-5870 CW (PR)

ORDER OF DISMISSAL

Plaintiff Isidro Hernandez, a state prisoner incarcerated at the Correctional Training Facility (CTF) in Soledad, California, filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff's motion to proceed in forma pauperis is granted in a separate order.

For the reasons discussed below, the complaint is DISMISSED.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must
2 allege two essential elements: (1) that a right secured by the
3 Constitution or laws of the United States was violated, and
4 (2) that the alleged violation was committed by a person acting
5 under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).
6 Under § 1983, liability may be imposed on an individual defendant
7 only if the plaintiff can show that the defendant proximately
8 caused the deprivation of a federally protected right. Leer v.
9 Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

10 II. Plaintiff's Claims

11 Plaintiff alleges that the entire California prison system is
12 severely overcrowded as demonstrated by the favorable decision in
13 the class action, Brown v. Plata, 131 S.Ct. 1910, 1932 (2011)
14 (addressing prison overcrowding as causing inadequate medical and
15 mental health treatment and creating violent, unsanitary and
16 chaotic conditions). Plaintiff seeks damages in the amount of one
17 hundred million dollars, to be released from prison and the
18 destruction of his criminal record. In his complaint, Plaintiff
19 provides no specific allegations regarding how the overcrowding
20 has adversely affected him. Instead, he discusses the history of
21 several prison cases describing general negative conditions from
22 over-crowding and concludes that he is entitled to the relief he
23 requests. Named as defendants are the governor, the director of
24 the California Department of Corrections and Rehabilitation and
the state court judge who sentenced Plaintiff to prison.

25 In an attached declaration, Plaintiff states that, when he
26 was incarcerated in prisons located in the Southern and Eastern
27 Districts of California, he experienced the following conditions
28 due to overcrowding: (1) he was housed with gang members who

1 verbally and physically assaulted him; (2) inmates caused frequent
2 riots which resulted in extended lock-downs; (3) the facilities
3 were filthy; (4) the food was of a low quality and low quantity;
4 (5) due to filthy showers, Plaintiff contracted a fungus infection
5 on his right foot that persists to this day; (6) Plaintiff
6 experienced loss of eyesight; (7) Plaintiff's physical health
7 deteriorated; (8) Plaintiff fell from the top bunk which resulted
8 in a broken right ankle and a left knee that would constantly
9 swell with pain; (9) Plaintiff had to wait so long to see an
10 orthopedist that his broken ankle healed improperly and then it
11 was too late to fix it; (10) Plaintiff had knee surgery but, due
12 to the poor surgery, the pain and the swelling in his knee
13 returned after ninety days; and (11) the orthoscopic surgery on
14 his knee was repeated in August, 2012, but it made no difference
15 and Plaintiff still suffers from pain and swelling in his knee.

16 To the extent Plaintiff may be seeking equitable and
17 injunctive relief involving the same events and claims being
18 litigated in the above class action, his claims fail. Individual
19 suits for injunctive and equitable relief from alleged
20 unconstitutional prison conditions cannot be brought where there
21 is a pending class action suit involving the same subject matter.
22 McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991); Gillespie
23 v. Crawford, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc) (to
24 allow individual suits would interfere with the orderly
25 administration of the class action and risk inconsistent
26 adjudications). Individual members of the class, like Plaintiff,
27 "may assert any equitable or declaratory claims they have, but
28 they must do so by urging further actions through the class
representative and attorney, including contempt proceedings, or by

1 intervention in the class action." Id. For these reasons,
2 dismissal of the claims for equitable and injunctive relief is
3 appropriate because this type of relief can be granted only in the
4 class actions. See Spears v. Johnson, 859 F.2d 853, 855 (11th
5 Cir. 1988), vacated in part on other grounds, 876 F.2d 1485 (11th
6 Cir. 1989); Gillespie, 858 F.2d at 1102. These claims are
7 dismissed without leave to amend because amendment would be
8 futile. See Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)
9 (courts not required to grant leave to amend if complaint lacks
10 merit entirely); Doe v. United States, 58 F.3d 494, 497 (9th Cir.
11 1995) (leave to amend not required if pleading cannot be cured by
12 allegation of other facts).

13 Regarding Plaintiff's claims for money damages, allegations
14 of overcrowding alone are insufficient to state a claim under the
15 Eighth Amendment. Rhodes v. Chapman, 452 U.S. 337, 348 (1981);
16 Balla v. Idaho State Bd. of Corr., 869 F.2d 461, 471 (9th Cir.
17 1989). A claim is cognizable, however, where it is alleged that
18 overcrowding has caused an increase in violence, has reduced the
19 provision of other constitutionally required services, or has
20 reached a level where the institution is no longer fit for human
21 habitation. See id. at 471. As discussed above, in his
22 declaration, Plaintiff alleges specific injuries which involve
23 violence and the reduction of constitutionally required services.
24 However, these injuries occurred in the Southern and Eastern
25 Districts of California. Thus, the proper venues for claims based
26 on these injuries lie in the Southern and Eastern Districts, not
27 in this district. See 28 U.S.C. § 1391(b) (venue lies in district
28 where defendants reside or where a substantial part of the events
giving rise to the claim occurred). The claims for money damages

1 based on Plaintiff's specific injuries are dismissed without
2 prejudice to filing separate complaints in the Southern and
3 Eastern Districts against the individuals who caused the alleged
4 injuries.

5 CONCLUSION

6 For the foregoing reasons, Plaintiff's complaint is
7 DISMISSED. The claims for equitable and injunctive relief are
8 dismissed with prejudice; claims for specific injuries occurring
9 while Plaintiff was housed in the Southern and Eastern Districts
10 are dismissed without prejudice to filing separate complaints in
11 those districts. The Clerk of the Court shall issue a separate
12 judgment and close the case.

13 IT IS SO ORDERED.

14 Dated: 4/4/2014

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16 CLAUDIA WILKEN
17 UNITED STATES DISTRICT JUDGE
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